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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NO. 83-321

GUY WALLER,

Petitioner,

-vs-

STATE OF GEORGIA,

Respondent,

AND

NO. 83-322

CLARENCE COLE, W.B. BURKE,
EULA BURKE, and ARCHIE THOMPSON,

Petitioners,

-vs-

STATE OF GEORGIA,

Respondent.

On Writ of Certiorari to the
Supreme Court of Georgia

BRIEF FOR AMICUS CURIAE
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INTEREST OF AMICUS CURIAE

This brief is submitted on behalf of the State of Arizona by its Attorney General.^{1/} The law of the State of Arizona recognizes that forfeiture is a powerful weapon in curtailing the diversion of wealth from licit channels.

Arizona enacted an Organized Crime Act in 1978. The Act authorizes civil in rem forfeiture of any property or interest acquired through a violation of the Act.

Arizona also has adopted a provision in its criminal code that allows for seizure and forfeiture of property relating to drug offenses. Seizure without process

1. The assistance in the preparation of this brief of Professor G. Robert Blakey of the Notre Dame Law School and Mr. Matthew Schultz (Notre Dame '84), Mr. Paul G. Kolesnikovas (Notre Dame '84) and Ms. Judith A. Morse (Notre Dame '86) is hereby acknowledged.

may be made under specified
circumstances.

Arizona argues in this brief that its laws as well as those of its sister States and the Federal Government are consistent with the United States Constitution.

STATEMENT

Petitioners were indicted along with numerous others on February 9, 1982, by the Grand Jury of Fulton County, Georgia, on charges of violating the Georgia Racketeer Influenced and Corrupt Organizations Act ("Georgia RICO Act"), codified at Ga. Code Ann. § 26-3401, et seq.^{1/} Petitioners were found guilty

2. The petitioners were indicted under the Ga. Code Ann. § 26-3401 et seq. After the indictment, the Georgia Code of 1981 became effective and reenacted the RICO Act at O.C.G.A. § 16-14-1 et seq. This brief cites the new Georgia Code of 1981 throughout.

under the Georgia RICO Act of commercial gambling and communicating gambling information.

Prior to trial, a hearing on a motion to suppress was held. The Court granted the State's motion to close the proceedings after the State asserted that the litigation of the motion would involve the introduction of electronically seized evidence that would affect other individuals not on trial or not indicted at that time.

After the trial and convictions, Petitioners filed a direct appeal to the Supreme Court of Georgia challenging, not only the closure of the courtroom, but also the seizure of property under O.C.G.A. § 16-14-7(f). The Court affirmed the conviction and sentences.

A motion for rehearing was denied on June 28, 1983. Petitions for writ of

certiorari were granted by this Court on November 7, 1983.

The questions, posed by petitioners, are:

1. Whether closure and exclusion of the public from portions of defendant's trial for seven days, over the opposition of the defendant and without any showing by the prosecution that closure was necessary to achieve an overriding governmental interest, violates the Sixth Amendment to the United States Constitution.

2.(a) Whether O.C.G.A. § 16-14-7(f) facially violates the Fourth and Fourteenth Amendments to the United States Constitution, because it delegates to the police officers executing a search warrant unbridled discretion to search for and seize anything they choose to seize.

3. Subsumed under this question is whether the searches and seizures, as conducted in this case under the authority of that statute, were general.

The attention of this Amicus brief will be directed solely toward question 2(a).

SUMMARY OF ARGUMENT

Legislative and other investigations into organized crime and related areas have revealed that criminal activity generates large sums of illicit funds. These funds are, in turn, invested in legitimate business and used to obtain political influence. This influence results in corruption of business and political integrity and in concentration of wealth in criminal control.

Both Congress and State legislatures have passed statutes aimed at curtailing the flow of illicit funds. The Federal Government and many of these States

employ civil forfeiture of property connected with crime. Some statutes permit seizure of assets without a warrant in order to enforce these laws effectively. The Georgia RICO statute is one of them.

The Georgia statute permits seizure of property without a warrant during legal searches when the law enforcement officer determines with probable cause that the property is subject to forfeiture and will be lost or destroyed. The statute must be construed constitutionally if possible. The statute requires a legal search and does not permit the officer to intrude into privacy without prior legal justification. The statute merely authorizes the officer to exercise limited discretion concerning what to seize. The exercise of this power is consistent with this Court's plain view

doctrine and generally accepted principles of particularity. Possible illegal application in particular cases should not void the statute on its face.

ARGUMENT

I. RACKETEERING¹ ACTIVITY RESULTS IN THE DIVERSION OF THE NATION'S WEALTH.

The enactment of RICO statutes on the Federal and State levels has resulted from national concern with the general impact of organized criminal activity on the nation, but particularly its effect upon the national economy.

In 1965, President Lyndon Baines Johnson established the President's Commission on Law Enforcement and

3. "Racketeering" is used here in the generic sense. The American Heritage Dictionary of the English Language 580 (P. Davies ed. 1979) ("racket" "an illegal or dishonest practice"; "racketeer" "one engaged in an illegal business"); United States v. Culbert, 435 U.S. 371, 375 (1978).

Administration of Justice, which examined the effects of organized and other forms of crime on the national economy. After assessing its impact⁴ the President's Commission recommended that a national strategy against organized crime be developed. The Commission found:

Law enforcement's way of fighting organized crime has been primitive compared to organized crime's way of operating. Law enforcement must use methods at least as efficient as organized crime's. The public and law enforcement must make a full-scale commitment to destroy the power of organized crime groups. The President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 200 (1967) (hereinafter Challenge).

The President's Commission recommended that Congress and the States enact

4. See generally President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Crime and Its Impact--An Assessment (1967) (hereinafter Impact).

legislation to curtail organized criminal activity. Id. at 293-301. Congress enacted the Organized Crime Control Act of 1970 ("Federal RICO Act"), Public Law 91-452, 91st Cong., 84 Stat. 922 (1970), codified in relevant part at, 18 U.S.C. §§ 1961-1968 (1976), and the Comprehensive Drug Abuse Prevention and Control Act of 1970 ("Federal Drug Control Act"), Public Law 91-513, 91st Cong., 84 Stat. 1236 (1970), codified in relevant part at, 21 U.S.C. § 801-966 (1976). Both statutes provide for criminal forfeiture of property connected with organized criminal activity. The Federal Drug Control Act also provides for civil forfeiture. Similar legislation has been widely adopted at the State level.

A. Economic Impact of Racketeering.

1. Drug Trafficking.

In 1967, the President's Commission

reported that drug addicts spent \$350 million on drugs. Impact at 53. The National Narcotics Intelligence Consumers Committee reported that the retail sale of drugs generated \$48 billion in revenue in 1977, \$50 billion in 1978, and \$64 billion in 1979. National Narcotics Consumers' Committee, The Supply of Drugs to the U.S. Illicit Market from Foreign and Domestic Sources in 1979 (with Projections for 1980-83) 5 (hereinafter Drugs). The amount continues to rise. Attorney General William French Smith recently reported that gross drug sales nationwide in 1980 approached \$79 billion, which is equivalent to the combined profits of America's 500 largest industrial corporations. Pileggi, There's No Business Like Drug Business, New York, Dec. 13, 1982, at 38 (hereinafter Drug Business).

2. White Collar Crime.

The President's Commission also considered the impact that various forms of white collar crime had on the economy, but reported that it was difficult to ascertain the amount of money involved. Impact at 102-104. Other organizations have since tried to estimate the costs.

In 1974, the U.S. Chamber of Commerce found that white collar crime cost \$41.78 billion, and it published the following breakdown:

Bankruptcy Fraud	\$.08 billion
Bribery, Kickbacks, Payoffs	3 billion
Computer Fraud	.10 billion
Consumer Fraud, Illegal Competition, and Deceptive Practices	21 billion
Credit Card and Check Fraud	1.1 billion
Embezzlement	7 billion
Insurance Fraud	2 billion

Receiving Stolen Property 3.5 billion

Securities Theft and Fraud 4 billion

Chamber of Commerce of the United States,
White Collar Crime: Everyone's Problem,
Everyone's Loss 6 (1974).

3. Redistributing Stolen Property.

Organized criminal groups are involved in both theft of property and its redistribution. Blakey and Goldsmith, Criminal Redistribution of Stolen Property, 74 Mich. L. Rev. 1511, 1538-42 (1976) (hereinafter Blakey and Goldsmith). Organized criminal groups may account for less than ten percent of certain kinds of thefts, but their activities may account for as much as ninety percent of its dollar value. Pennsylvania Crime at 167.

4. Gambling.

In 1967, the President's Commission estimated the money involved in illegal gambling to be \$20 billion annually.

Other estimates place the amount from \$7-50 billion. Impact at 52-53.

Estimates vary greatly because of the difficulty in measuring gambling activity. The Commission also estimated that profits from illegal gambling were approximately one-third of gross revenue. Id.

B. Political and Social Effects.

Without reviewing all aspects of illegal activity, it can be seen that organized crime and similar groups acquire tremendous amounts of wealth from racketeering activities. This wealth may then be poured back into the illegal activities or invested in legitimate endeavors. An ordinary business cannot compete with a tainted enterprise that has ready access to untaxed revenue from narcotics, gambling and other activities

and uses racketeering techniques to advance its affairs.

II. LEGISLATURES HAVE USED FORFEITURE TO CURTAIL THE DIVERSION OF THE NATION'S WEALTH.

Congress in 1970 enacted two major pieces of legislation in an effort to combat the enormous growth of organized crime, the Federal RICO Act, codified in relevant part at, 18 U.S.C. §§ 1961-1968 (1976), and the Federal Drug Control Act, codified in relevant part at, 21 U.S.C. §§ 801-966 (1976). Since organized crime presented a pressing national problem, law enforcement had to be given all appropriate weapons. Fines and imprisonment are not always effective criminal sanctions in dealing with the flow of illicit funds. Forfeiture of property connected with criminal activity, however, could remove the

profit motive from the crime, if the forfeiture was effectively enforced.^{1/} Soon after the Federal legislation, States joined in the fight against organized crime by enacting their own forfeiture provisions.

A. Forfeiture as a Tool for Fighting Crime.

Two types of forfeiture provisions are currently employed in legislation, criminal and civil. In 1790, the First Congress prohibited certain types of common law criminal forfeitures. Act of

5. It has not always been effectively enforced. United States General Accounting Office, Asset Forfeiture--A Seldom Used Tool in Combatting Drug Trafficking at 30-42 (1981). The problems are threefold: (1) uncertain status of assets, (2) third party holdings, and (3) dissipation prior to seizure. United States General Accounting Office, Stronger Federal Efforts Needed in Fight Against Organized Crime 31-34 (1981).

April 30, 1790, c. 9, § 24, 1 Stat. 117.

On the history of criminal and civil forfeiture, see Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 680-90 (1974); Note, Bane of American Forfeiture Law--Banished at Last?, 63 Cornell L. Rev. 768 (1977). As a result, criminal forfeitures played little role in law enforcement on the Federal level for 180 years. Congress, however, resuscitated criminal forfeiture in 1970 by enacting RICO and Section 848 of the Drug Control Act. Civil forfeitures have played a revenue and law enforcement role since the launching of the Republic.

Civil forfeiture is directed, not against the defendant, but against specified property. It requires a court judgment. The accepted legal theory behind civil forfeitures is that they are a proceeding against the "guilty"

property, an in rem proceeding. Justice Story in upholding civil in rem forfeitures held that such forfeitures were independent of any criminal action taken against anyone. The Palmyra 25 U.S. (12 Wheat.) 1, 14-15 (1827).

The constitutional validity of in rem civil forfeitures is settled beyond serious question. Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974).

B. The Variety of Forfeitures Used in American Law.

1. Federal RICO

Forfeitures used in American law that are pertinent to the case at bar are: the Federal RICO Act, the Federal Comprehensive Drug Abuse Prevention and Control Act, various State RICO statutes (ten of which allow civil forfeitures, and six of those ten facially allow

seizure without process) and state narcotics acts and the Uniform Controlled Substance Act.

C. This Court's Construction of the Georgia RICO Forfeiture Provision Will Necessarily Extend to Similar Federal and State Legislation.

The Georgia RICO statute permits an officer to seize property when the officer has probable cause to believe the property is subject to forfeiture and when the property will be lost or destroyed if not seized. The Georgia civil forfeiture provision is not an anomaly. The impact of a decision declaring Georgia's forfeiture provision facially unconstitutional will extend beyond Georgia.

In fact, the Georgia RICO statute may afford officers less discretion than many other statutes, since the Georgia statute

explicitly requires that the property be subject to loss or destruction if not seized. An exigent circumstances requirement is, therefore, written on the face of the statute.

Civil forfeiture is a powerful tool that legislatures have adopted in curtailing the flow of illicit funds. Depriving criminals of their illegal gains reduces the incentive to conduct criminal enterprises.⁶

III. THE GEORGIA STATUTE PROVIDING FOR WARRANTLESS SEIZURES IS NOT UNCONSTITUTIONAL ON ITS FACE.

The Georgia RICO statute provides for civil forfeiture of "all property of

6. See R. Posner, Economic Analysis of Law § 7.6 at 176 (2d ed. 1977) ("[T]o the extent that profits earned in organized crime can be safely invested in legitimate activities to yield additional profits, the expected return to organized crime [in its illicit activities] is higher than it would otherwise be.").

every kind used or intended for use in the course of, derived from, or realized through a pattern of racketeering activity." O.C.G.A. § 16-14-7(a).

Appendix A. A "pattern of racketeering activity" is defined in detail by reference to other specific provisions of law. O.C.G.A. §§ 16-14-3(2),

16-14-3(3). Appendix A. The statute provides for seizure of property according to a procedure spelled out in the RICO statute and in the Georgia Civil Practice Act. O.C.G.A. § 16-14-7(b).

The forfeiture procedure begins either with a complaint filed by the district attorney or with a warrantless seizure by a police officer. O.C.G.A.

§§ 16-14-7(d), 16-14-7(e), 16-14-7(f).

If the procedure begins with a complaint, a court must determine with reasonable cause that the property is subject to

forfeiture and must provide notice to all parties having or claiming an interest in the property, except where the court determines that notice would result in loss or destruction of the property.

O.C.G.A. § 16-14-7(e). This procedure provides for a preseizure judicial determination of reasonable cause and notice, as long as notice does not jeopardize the forfeiture itself.

Where the procedure begins with warrantless seizure, while a preseizure judicial determination is not required, the police officer must still obey the Fourth Amendment, that is, he must have probable cause to believe that the property is subject to forfeiture, and he must determine that the property will be lost or destroyed if not seized.

O.C.G.A. § 16-14-7(f). The statute also requires that the district attorney file

a complaint within a reasonable time after seizure. Id.

A. This Court Must Uphold a Statute if a Constitutional Interpretation is Possible.

The Georgia RICO statute must, of course, comply with the Fourth Amendment. When construing this statute, this Court must, however, favor any constitutional interpretation over an interpretation that would void the statute. If a statute has two possible interpretations, the constitutional interpretation should prevail. This has always been the approach taken by this Court. See Califano v. Yamasaki, 442 U.S. 682, 693 (1980) (citing Crowell v. Benson, 285 U.S. 22, 62 (1932)); Parsons v. Bedford, 28 U.S. (3 Pet.) 432, 448 (1830) (Story, J.).

B. The Georgia Statute Requires that Seizure Take Place During a Legal Search

that Otherwise Complies with the Warrant Requirement or with a Well-Recognized Exception.

The Georgia statute authorizes warrantless seizure of property only during a legal search. The seizure must take place during a search that does not otherwise violate the Fourth Amendment. The statute does not delegate to police officers the power to extend searches beyond their legal boundaries in order to seize forfeitable property. Cf. Lo-Ji Sales Inc. v. New York, 442 U.S. 319, 325-26 (1979) (Warrant that authorized search for obscenity beyond designated material too general).

1. An Officer Applying the Georgia RICO Statute does not have Discretion to Extend the Scope of the Search.

Legal searches include searches authorized by warrant or searches that

fall within certain well-recognized exceptions, including search incident to arrest, consent, and exigent circumstances. C. Whitebread, Criminal Procedure § 4.03(e) at 108 (1980) (six exceptions). The extent that an officer can invade a person's privacy during such a search is strictly limited by the foundation of the search itself. On its face, therefore, the statute does not give the officer discretion, but instead it carefully regulates such discretion.

2. Seizure of Property Without a Warrant is Permitted Under the Plain View Doctrine.

Officers may, however, exercise an appropriately circumscribed power to seize when they lawfully search for property. Officers can seize property specified in a warrant; they may also seize certain property that falls in

plain view. Property seized under the plain view doctrine must meet specific requirements developed in Coolidge v. New Hampshire, 403 U.S. 443 (1971). Justice Stewart's plurality opinion placed clear limitations on the officer's discretion concerning what can be seized. The officer must discover the item inadvertently during a legal search and it must be immediately apparent that the item is incriminating. Id. at 466. See also, Texas v. Brown, 103 S.Ct. 1535, 1540-43 (1983) (inadvertence element questioned). Accordingly, this Court's plain view doctrine constitutionally permits officers to seize evidence, fruits and instrumentalities of crime and contraband. Id. at 1540.

Under the plain view doctrine, the United States Constitution permits an officer an appropriate measure of

discretion in the first instance in determining probable cause concerning what property can be seized. Any deviation from the requirements of the plain view doctrine results in an illegal seizure under the Constitution and nothing in the Georgia statute seeks to justify any other procedure.

C. The Georgia Legislature Has Not Delegated Too Much Discretion to Police.

The Georgia RICO statute provides for forfeiture of all property connected with a pattern of racketeering activity.

O.C.G.A. § 16-14-7(a). Appendix A. Forfeiture of property connected with criminal activity is constitutional, and in certain cases, preseizure notice need not be given to persons with interests in the property. Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 677-80 (1974).

Legislatures have appropriately delegated authority to law enforcement officers to seize property during legal searches without warrants since the early days of the Constitution. For example, the First Congress declared that imported goods were subject to duties and that the goods would be forfeited if the duties were not paid. The Congress also authorized the collector of duties to search vessels and seize goods without a warrant. This early Act required collectors to obtain a warrant to search homes, but it gave the collectors discretion to search vessels and seize goods aboard without judicial process. Act of July 31, 1789, c. 5, § 24, 1 Stat. 43.

A legislature can give police discretion to seize property when a legitimate State interest in the property

is at stake. See Calero-Toledo, 416 U.S. at 678-79. These interests include asserting in rem jurisdiction for civil forfeiture over property used for illicit purposes, enforcing criminal sanctions, and preventing loss or destruction of the property. Id. at 679. See also, Fuentes v. Shevin, 407 U.S. 67, 91 (1972).

Legislatures cannot, of course, authorize an unconstitutional search and seizure simply to promote efficient law enforcement. The much feared general warrant would result if legislatures could authorize unreasonable warrantless searches and seizures. G.M. Leasing, 429 U.S. at 355. But legislatures can authorize the seizure of property if police are given guidelines to follow when exercising discretion. Id. at 357-58. A general warrant does not result when a legislature limits a police officer's discretion to seize property in

plain view.

The Georgia RICO statute authorizes police to seize property connected with racketeering activity. Racketeering activity is specifically defined.

O.C.G.A. § 16-14-3(3). Appendix A. The officer must determine that the property is connected with that racketeering by the probable cause standard and must determine that the property will be lost or destroyed if not seized. Identifying the property subject to seizure as such hardly seems an insuperable task, absent a First Amendment consideration, here not present. Lo-Ji Sales, Inc. v. New York, 442 U.S. 319, 325-26 (1979); Stanford v. Texas, 379 U.S. 476, 485 n. 16 (1965); Marcus v. Search Warrant, 367 U.S. 717, 730-31 (1961). "It is enough if the description is such that the officer . . . can with reasonable effort ascertain" what is to be seized.

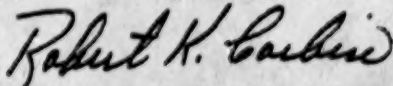
Steele v. United States, 267 U.S. 498,
503 (1925) (general description of place
and thing held adequate).

CONCLUSION

The Georgia RICO statute's forfeiture provision limits warrantless seizures to legal searches and to property that can be seized under the plain view doctrine. These limitations require that the law enforcement officers apply the statute constitutionally. Violations of the Fourth Amendment in particular cases should not void the statute on its face.

Respectfully submitted this 23rd day of
February, 1984.

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APPENDIX A

Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act ch. 26-34 provides:

26-3402 [16-14-3] Definitions

(2) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after July 1, 1980, and that the last of such incidents occurred within four years, excluding any periods of imprisonment, after the commission of a prior incident of racketeering activity.

3(A) "Racketeering activity" means to commit, to attempt to commit, or to solicit, coerce, or intimidate another person to commit any crime which is chargeable by indictment under the following laws of this state:

- (i) Article 2 of Chapter 13 of this title, relating to controlled substances;
- (ii) Article 3 of Chapter 13 of this title, known as the "Dangerous Drugs Act";
- (iii) Subsection (j) of Code Section 16-13-30, relating to marijuana;
- (iv) Article 1 of Chapter 5 of

- this title, relating to homicide;
- (v) Article 2 of Chapter 5 of this title, relating to bodily injury and related offenses;
 - (vi) Article 3 of Chapter 7 of this title, relating to arson;
 - (vii) Code Section 16-7-1, relating to burglary;
 - (viii) Code Section 16-9-1, relating to forgery in the first degree;
 - (ix) Article 1 of Chapter 8 of this title, relating to theft;
 - (x) Article 2 of Chapter 8 of this title, relating to robbery;
 - (xi) Code Sections 16-6-9 through 16-6-12 and 16-6-14, relating to prostitution and pandering;
 - (xii) Code Section 16-12-80, relating to distributing obscene materials;
 - (xiii) Code Section 16-10-2, relating to bribery;
 - (xiv) Code Section 16-10-93, relating to influencing witnesses;
 - (xv) Article 4 of Chapter 9 of this title and Code Sections 16-10-20, 16-10-23, 16-10-91, and 16-10-95, relating to perjury and other falsifications;
 - (xvi) Code Section 16-10-94, relating to tampering with evidence;
 - (xvii) Code Section 15-12-22,

- relating to commerical gambling;
- (xviii) Code Section 3-3-27, relating to distilling or making liquors;
- (xix) Part 2 of Article 4 of Chapter 11 of this title, known as the "Georgia Firearms and Weapons Act";
- (xx) Code Section 16-8-60, relating to unauthorized transfers and reproductions of recorded material;
- (xxi) Code Section 10-5-24, relating to violations of the "Georgia Securities Act of 1973";
- (xxii) Code Section 3-3-27, relating to the unlawful distillation, manufacture, and transportation of alcoholic beverages;
- (xxiii) Code Sections 16-9-31, 16-9-32, 16-9-33, and 16-9-34, relating to the unlawful use of financial transaction cards;
- (xxiv) Code Section 4-3-90, relating to certain felonies involving certificates of title, security interest, or liens concerning motor vehicles;
- (xxv) Code Section 4-4-21, relating to removal or falsification of identification numbers;
- (xxvi) Code Section 40-4-22, relating to possession of motor vehicle parts from which the identification has been removed;
- (xxvii) Code Section 16-9-70,

- relating to use of an article with an altered identification mark;
- (xxviii) Article 6 of Chapter 9 of this title, known as the "Georgia Computer Systems Protection Act"; or
- (xxix) Any conduct defined as "racketeering activity" under 18 U.S.C. 1691 (1)(A), (B), (C), and (D).

(B) "Racketeering activity" shall also mean any act or threat involving murder, kidnapping, gambling, arson, robbery, theft, receipt of stolen property, bribery, extortion, obstruction of justice, dealing in narcotic or dangerous drugs, or dealing in securities which is chargeable under the laws of the United States or any of the several states and which is punishable by imprisonment for more than one year.

26-3405 [16-14-7] Forfeiture

(a) All property of every kind used or intended for use in the course of, derived from, or realized through a pattern of racketeering activity is subject to forfeiture to the State. Forfeiture shall be had by a civil procedure known as a RICO forfeiture proceeding under the following rules.

(b) A RICO forfeiture proceeding shall be governed by Chapter 11 of Title 9, the "Georgia Civil Practice Act" except to the extent that special rules of procedure are stated in this chapter.

(c) A RICO forfeiture proceeding shall be

an in rem proceeding against the property.

(d) A RICO forfeiture proceeding shall be instituted by complaint and prosecuted by the district attorney of the county in which the property is located or seized. The proceeding may be commenced before or after seizure of the property.

(e) If the complaint is filed before seizure, it shall state what property is sought to be forfeited, that the property is within the jurisdiction of the court, the grounds for forfeiture, and the names of all persons known to have or claim an interest in the property. The court shall determine ex parte whether there is reasonable cause to believe that the property is subject to forfeiture and that notice to those persons having or claiming an interest in the property prior to seizure would cause the loss or destruction of the property. If the court finds that reasonable cause does not exist to believe the property is subject to forfeiture, it shall dismiss the complaint. If the court finds that reasonable cause does exist to believe the property is subject to forfeiture but there is not reasonable cause to believe that prior notice would result in loss or destruction, it shall order service on all persons known to have or claim an interest in the property prior to a further hearing on whether a writ of seizure should issue. If the court finds that there is reasonable cause to believe that prior notice would cause loss or destruction, it shall without any further hearing or notice, issue a writ of seizure directing the sheriff of the county where the property is found to seize it.

(f) Seizure may be effected by a law enforcement officer authorized to enforce the penal laws of this state prior to the filing of the complaint and without a writ of seizure if the seizure is incident to a lawful arrest, search, or inspection and the officer has probable cause to believe the property is subject to forfeiture and will be lost or destroyed if not seized. Within ten days of the date of seizure, the seizure shall be reported by the officer to the district attorney of the circuit in which the seizure is effected; and the district attorney shall, within a reasonable time after receiving notice of seizure, file a complaint for forfeiture. The complaint shall state, in addition to the information required in subsection (e) of this Code section, the date and place of seizure.

(g) After the complaint is filed or the seizure effected, whichever is later, every person known to have or claim an interest in the property shall be served, if not previously served, with a copy of the complaint and a notice of seizure in the manner provided by Chapter 11 of Title 9, the "Georgia Civil Practice Act." Service by publication may be ordered upon any party whose whereabouts cannot be determined.

(h)(1) Any person claiming an interest in the property may become a party to the action at any time prior to judgment whether named in the complaint or not. Any party claiming a substantial interest in the property may upon motion be allowed by the court to take possession of the property upon posting bond with

good and sufficient security in double the amount of the property's value conditioned to pay the value of any interest in the property found to be subject to forfeiture or the value of any interest of another not subject to forfeiture. Such a party taking possession shall not remove the property from the territorial jurisdiction of the court without written permission from the court.

APPENDIX B

Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 881, provides:

§ 881. Forfeitures

(a) Subject property

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

- (1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this subchapter.
- (2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this subchapter.
- (3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).
- (4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of

property described in paragraph (1) or (2), except that --

- (A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this subchapter or subchapter II of this chapter; and
 - (B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state.
- (5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter.
 - (6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a

controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

- (b) Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims.

Any property subject for forfeiture to the United States under this subchapter may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when--

- (1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;
- (2) the property subject to seizure has been the subject of a prior judgment in favor of the United States in a criminal injunction or forfeiture proceeding under this subchapter;

- (3) the Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
- (4) the Attorney General has probable cause to believe that the property has been used or is intended to be used in violation of this subchapter.

In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

APPENDIX C

Uniform Control Substances Act, 9 U.L.A.
195 (1979), provides:

§ 505 [Forfeitures]

(a) the Following are subject to
forfeiture:

- (1) all controlled substances which
have been manufactured,
distributed, dispensed or acquired
in violation of this Act;
- (2) all raw materials, products and
equipment of any kind which are
used, or intended for use, in
manufacturing, compounding,
processing, delivering, importing,
or exporting any controlled
substance in violation of this Act;
- (3) all property which is used, or
intended for use, as a container
for property described in
paragraphs (1) or (2);
- (4) all conveyances, including
aircraft, vehicles, or vessels,
which are used, or are intended
for use, to transport, or in any
manner to facilitate the
transportation, for the purpose of
sale or receipt of property
described in paragraph (1) or (2),
but:
 - (i) no conveyance used by any
person as a common carrier in
the transaction of business

as a common carrier is subject to forfeiture under this Section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this Act;

- (ii) no conveyance is subject to forfeiture under this Section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;
- (iii) a conveyance is not subject to forfeiture for a violation of Section 401(c); and,
- (iv) a forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.

- (5) all books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this Act.

(b) Property subject to forfeiture under this Act may be seized by the [appropriate person or agency] upon process issued by any [appropriate court] having jurisdiction over the property. Seizure without process may be made if:

- (1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;
- (2) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this Act;
- (3) the [appropriate person or agency] has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
- (4) the [appropriate person or agency] has probable cause to believe that the property was used or is intended to be used in violation of this Act.

APPENDIX D

Title 49 of the United States Code provides:

§ 782. Seizure and forfeiture

Any vessel, vehicle, or aircraft which has been or is being used in violation of any provision of section 781 of this title, or in, upon, or by means of which any violation of said section has taken or is taking place, shall be seized and forfeited: Provided, That no vessel, vehicle, or aircraft used by any person as a common carrier in the transaction of business as such common carrier shall be forfeited under the provisions of this chapter unless it shall appear that (1) in the case of a railway car or engine, the owner, or (2) in the case of any other such vessel, vehicle, or aircraft, the owner or the master of such vessel or the owner or conductor, driver, pilot, or other person in charge of such vehicle or aircraft was at the time of the alleged illegal act a consenting party or privy thereto: Provided further, That no vessel, vehicle, or aircraft shall be forfeited under the provisions of this chapter by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such vessel, vehicle, or aircraft was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States, or of any state.

§ 783. Designation of officers by
Secretary of Treasury; duties of
officers

The Secretary of the Treasury is empowered to authorize, or designate, officers, agents, or other persons to carry out the provisions of this chapter. It shall be the duty of any officer, agent, or other person so authorized or designated, or authorized by law, whenever he shall discover any vessel, vehicle, or aircraft which has been or is being used in violation of any of the provisions of this chapter, or in, upon, or by means of which any violation of this chapter has taken or is taking place, to seize such vessel, vehicle, or aircraft and to place it in the custody of such person as may be authorized or designated for that purpose by the Secretary of the Treasury, to await disposition pursuant to the provisions of this chapter and any regulations issued hereunder.

APPENDIX E

Title 8 of the United States Code provides:

§ 1324. Bringing in and harboring certain aliens

- (b) Seizure and forfeiture of conveyances; exceptions; officers and authorized persons; disposition of forfeited conveyances; suits and actions
- (1) Any conveyance, including any vessel, vehicle, or aircraft, which is used in the commission of a violation of subsection (a) of this section shall be subject to seizure and forfeiture, except that--
 - (A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to the illegal act; and
 - (B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any

person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State.

- (2) Any conveyance subject to seizure under this section may be seized without warrant if there is probable cause to believe the conveyance has been used in a violation of subsection (a) of this section and circumstances exist where a warrant is not constitutionally required.

APPENDIX F

Internal Revenue Code provides:

§ 7321. Authority to seize property
subject to forfeiture

Any property subject to forfeiture to the United States under any provision of this title may be seized by the Secretary or his delegate.

§ 7323. Judicial action to enforce
forfeiture

(a) Nature and venue.--The proceedings to enforce such forfeitures shall be in the nature of a proceeding in rem in the United States District Court for the district where such seizure is made.

APPENDIX G

Title 33 of the United States Code provides:

§ 385. Seizure and condemnation of vessels fitted out for piracy

Any vessel built, purchase, fitted out in whole or in part, or held for the purpose of being employed in the commission of any piratical aggression, search, restraint, depredation, or seizure, or in the commission of any other act of piracy, as defined by the law of nations, shall be liable to be captured and brought into any port of the United States if found upon the high seas, or to be seized if found in any port or place within the United States, whether the same shall have actually sailed upon any piratical expedition or not, and whether any act of piracy shall have been committed or attempted upon or from such vessel or not; and any such vessel may be adjudged and condemned, if captured by a vessel authorized as mentioned in section 386 of this title to the use of the United States, and to that of the captors, and if seized by a collector, surveyor, or marshal, then to the use of the United States.

§ 387. Duties of officers of customs and marshals as to seizure

The collectors of the several ports of entry, the surveyors of the several ports of delivery, and the marshals of the several judicial districts within the

United States, shall seize any vessel or boat built, purchased, fitted out, or held as mentioned in section 385 of this title, which may be found within their respective ports or districts, and to cause the same to be proceeded against and disposed of as provided by that section.